

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

STATE OF OHIO ex rel.
MICHAEL DeWINE
OHIO ATTORNEY GENERAL,

CASE NO. 12 CV 1684

JUDGE KRICHBAUM

Plaintiff,

v.

JOSEPH RAINERI, et al.

Defendants.

CONSENT ORDER FOR PERMANENT INJUNCTION AND CIVIL PENALTY

Plaintiff, the State of Ohio, (“Plaintiff” / “State”) by and through its counsel, Attorney General Michael DeWine, has filed three separate Complaints in three separate counties, specifically identified as: (1) Seneca County Case No. 11 CV 0211, a Complaint against Defendants Joseph Raineri and Fostoria Mobile Estates, Inc.; (2) Huron County Case No. CVH 20120482, a Complaint against Defendants Joseph Raineri and Branchwood Estates, LLC; and (3) Mahoning County Case No. 12 CV 1684, a Complaint against Defendants Joseph Raineri and Tecumseh Village Mobile Home Park, Inc. All three of the State’s Complaints allege violations of Ohio’s Water Pollution Control laws, Ohio Revised Code (“R.C.”) Chapter 6111. Additionally, the Complaint in Seneca County Case No. 11 CV 0211 also alleges violations of Ohio’s Drinking Water laws, R.C. Chapter 6109.

This Consent Order constitutes a resolution of all three cases between the State and Defendants Joseph Raineri, Fostoria Mobile Estates, Inc., Branchwood Estates, LLC, and Tecumseh Village Mobile Home Park, Inc. (collectively, “the Raineri Defendants”). Identical

Consent Orders, differing only by caption and Judges' signatures, are being filed in Seneca, Huron, and Mahoning Counties. For purposes of the compliance dates established in this Order, the latest date of the entry of the Consent Order in the last of the three Courts shall be considered the date of entry of the Order.

NOW THEREFORE, without the trial of any issue of fact or law, and upon the consent of the parties hereto, it is hereby **ORDERED, ADJUDGED** and **DECREED** as follows:

I. DEFINITIONS

1. As used in this Consent Order:
 - (a) "Fostoria Site" shall mean the mobile home park and property located at 5473 N. TR 63, #400, Fostoria, Seneca County, Ohio 44830.
 - (b) "Branchwood Site" shall mean the mobile home park and property located at 100 South Main Street, Fairfield Township, Huron County, Ohio 44855.
 - (c) "Tecumseh Site" shall mean the mobile home park and property located at 1005 Lake Park Road, Sebring, Mahoning County, Ohio 44855.

II. JURISDICTION AND VENUE

2. The Seneca County Court of Common Pleas has jurisdiction over both the parties and the subject matter of Case No. 11 CV 0211, *State of Ohio v. Joseph Raineri and Fostoria Mobile Estates, Inc.*, pursuant to R.C. Chapters 6111 and 6109. The Seneca County Complaint states a claim upon which relief can be granted against Defendants Joseph Raineri and Fostoria Mobile Estates, Inc. under R.C. Chapters 6111 and 6109. Venue is proper in that Court for that action.

3. The Huron County Court of Common Pleas has jurisdiction over both the parties and the subject matter of Case No. CVH20120482, *State of Ohio v. Joseph Raineri and Branchwood Estates, LLC*, pursuant to R.C. Chapter 6111. The Huron County Complaint states a claim upon which relief can be granted against the Defendants Joseph Raineri and Branchwood Estates, LLC under R.C. Chapter 6111. Venue is proper in that Court for that action.

4. The Mahoning County Court of Common Pleas has jurisdiction over both the parties and the subject matter of Case No. 12CV1684, *State of Ohio v. Joseph Raineri and Tecumseh Village Mobile Home Park, Inc.*, pursuant to R.C. Chapter 6111. The Mahoning County Complaint states a claim upon which relief can be granted against Defendants Joseph Raineri and Tecumseh Village Mobile Home Park, Inc. under R.C. Chapter 6111. Venue is proper in this Court for this action.

III. PERSONS BOUND

5. All terms and provisions of this Consent Order shall apply to and be binding upon the Raineri Defendants, the Raineri Defendants' agents, employees, assigns, successors in interest and any person acting in concert, privity or participation with the Raineri Defendants and any others pursuant to Civ.R. 65. The Raineri Defendants shall provide a copy of this Consent Order to each general contractor and/or consultant employed to perform work itemized herein.

IV. SATISFACTION OF LAWSUIT

6. Compliance with the terms of this Consent Order shall constitute full satisfaction of any civil liability by the Raineri Defendants for all claims alleged in all three of the State's Complaints.

V. RESERVATION OF RIGHTS

7. Nothing in this Consent Order, including the imposition of stipulated civil penalties for violations of this Consent Order, shall limit the authority of the State of Ohio to:

- (a) Seek any legal or equitable relief from the Raineri Defendants or any other appropriate person for claims or conditions not alleged in the Complaints, including violations that occurred after the filing of the Complaints;
- (b) Seek any legal or equitable relief from the Raineri Defendants or any other appropriate person for claims or conditions alleged in the Complaints that occur or exist on the date of or after the entry of this Consent Order, to the extent those claims or conditions are not addressed by this Consent Order;
- (c) Enforce this Consent Order through a contempt action or otherwise seek relief for violations of this Consent Order;
- (d) Take any action authorized by law against any appropriate person(s), including the Raineri Defendants, to eliminate or mitigate conditions at the Branchwood Site, and/or the Tecumseh Site that may present a threat to the public health or welfare, or the environment; and/or,
- (e) Bring any legal or equitable action against any appropriate person(s) other than the Raineri Defendants for any violation of applicable laws. For the purposes of this Consent Order, and in particular the provisions of this Paragraph, the term "person" includes: an individual, corporation, business trust, estate, trust, partnership, association, municipal corporation, interstate body created by compact, and other officers, agents, employees, attorneys, and/or those in active concert or participation with any of them.

VI. INJUNCTION AND COMPLIANCE PROGRAM

8. The Raineri Defendants are permanently enjoined and ordered to comply immediately with all applicable provisions of R.C. Chapter 6111 and the rules promulgated thereunder, except as otherwise provided in this Consent Order.

9. The Raineri Defendants are enjoined to properly operate and maintain the wastewater treatment plants located at the Branchwood and Tecumseh Sites in accordance with R.C. Chapter 6111, the rules promulgated thereunder, the terms and conditions of all plans, orders, schedules and/or with the permits issued to Defendants pursuant to R.C. Chapter 6111, except as otherwise provided in this Consent Order.

10. At the Branchwood Site, Joseph Raineri and Branchwood Estates, LLC, are enjoined and ordered to do the following with respect to the wastewater treatment plant and sewer system located at that site:

- (a) By no later than one (1) month following the entry of this Consent Order, Joseph Raineri and Branchwood Estates, LLC shall submit an NPDES permit application for the wastewater treatment plant to Ohio EPA Northwest District Office.
- (b) By no later than one (1) month following the entry of this Consent Order, Joseph Raineri and Branchwood Estates, LLC shall contract with a licensed Class I Operator of Record to oversee the operations of the wastewater treatment plant and to submit a complete Operator of Record form to Ohio EPA Northwest District Office.
- (c) By no later than two (2) months following the entry of this Consent Order, Joseph Raineri and Branchwood Estates, LLC shall engage the services of a Professional Engineer licensed in the State of Ohio to evaluate the wastewater treatment plant and sewer system. Such an evaluation shall include, but is not limited to, an examination of the wastewater treatment plant, including the aeration tank and the clarifier. Notice shall be provided to Ohio EPA Northwest District Office upon engaging the Professional Engineer.

- (d) By no later than six (6) months following the entry of this Consent Order, Joseph Raineri and Branchwood Estates, LLC shall submit detail plans for improvements to be made to the wastewater treatment plant as determined by the Professional Engineer's evaluation of the wastewater treatment plant and sewer system, or for connection to the local sanitary sewer system, to Ohio EPA Northwest District Office for Ohio EPA's approval thereof. The detail plans for improvements to the wastewater treatment plant shall include the consideration of, but not be limited to, the addition of an equalization tank, tertiary filters, and a disinfection system.
- (e) By no later than fifteen (15) months following the entry of this Consent Order, Joseph Raineri and Branchwood Estates, LLC shall commence construction of the wastewater treatment plant improvements in accordance with the Ohio EPA approved detail plans. Any permit to install applications that are required to be submitted prior to construction shall be submitted in accordance with the applicable schedule prior to the commencement of construction pursuant to this paragraph.
- (f) By no later than seven (7) days following the commencement of construction as provided in Paragraph 10(e), above, Joseph Raineri and Branchwood Estates, LLC shall notify Ohio EPA Northwest District Office.
- (g) By no later than twenty-one (21) months following the entry of this Consent Order, Joseph Raineri and Branchwood Estates, LLC shall have completed the construction of the wastewater treatment plant improvements in accordance with the detail plans.
- (h) By no later than twenty-four (24) months following the entry of this Consent Order, Joseph Raineri and Branchwood Estates, LLC shall attain operational level of the wastewater treatment plant.
- (i) By no later than seven (7) days following the attainment of operational level of the wastewater treatment plant as provided in Paragraph 10(h), above, Joseph Raineri and Branchwood Estates, LLC shall notify Ohio EPA Northwest District Office.

11. At the Tecumseh Site, Joseph Raineri and Tecumseh Village Mobile Home Park, Inc., are enjoined and ordered to do the following with respect to the wastewater treatment plant and sewer system located at that site:

- (a) By no later than two (2) months following the entry of this Consent Order, Joseph Raineri and Tecumseh Village Mobile Home Park, Inc. shall

engage the services of a Professional Engineer licensed in the State of Ohio to evaluate the wastewater treatment plant and sewer system. Such an evaluation shall include, but is not limited to, an examination of the wastewater treatment plant's equalization tank, the aeration tank, the clarifier, the tertiary filters, and the disinfection system. Notice shall be provided to Ohio EPA Northeast District Office upon engaging the Professional Engineer.

- (b) By no later than six (6) months following the entry of this Consent Order, Joseph Raineri and Tecumseh Village Mobile Home Park, Inc. shall submit detail plans for improvements to be made to the wastewater treatment plant as determined by the Professional Engineer's evaluation of the wastewater treatment plant and sewer system or for connection to the local sanitary sewer system to Ohio EPA Northeast District Office for Ohio EPA's approval thereof.
- (c) By no later than fifteen (15) months following the entry of this Consent Order, Joseph Raineri and Tecumseh Village Mobile Home Park, Inc. shall commence construction of the wastewater treatment plant improvements in accordance with the Ohio EPA approved detail plans. Any permit to install applications that are required to be submitted prior to construction shall be submitted in accordance with the applicable schedule prior to the commencement of construction pursuant to this paragraph.
- (d) By no later than seven (7) days following the commencement of construction as provided in Paragraph 11(c), above, Joseph Raineri and Tecumseh Village Mobile Home Park, Inc. shall notify Ohio EPA Northeast District Office.
- (e) By no later than twenty-one (21) months following the entry of this Consent Order, Joseph Raineri and Tecumseh Village Mobile Home Park, Inc. shall have completed the construction of the wastewater treatment plant improvements in accordance with the detail plans.
- (f) By no later than twenty-four (24) months following the entry of this Consent Order, Joseph Raineri and Tecumseh Village Mobile Home Park, Inc. shall attain operational level of the wastewater treatment plant.
- (g) By no later than seven (7) days following the attainment of operational level of the wastewater treatment plant as provided in Paragraph 11(f), above, Joseph Raineri and Tecumseh Village Mobile Home Park, Inc. shall notify Ohio EPA Northeast District Office.

VII. SUBMITTAL OF DOCUMENTS

12. Documents required to be submitted to Ohio EPA's Northwest District Office for the Branchwood Site pursuant to this Consent Order shall be sent to: Ohio Environmental Protection Agency, Northwest District Office, Division of Surface Water, ATTN: Andrew Gall, or his successor, at 347 North Dunbridge Road, Bowling Green, Ohio 43402.

13. Documents required to be submitted to Ohio EPA's Northeast District Office for the Tecumseh Site pursuant to this Consent Order shall be sent to: Ohio Environmental Protection Agency, Northeast District Office, Division of Surface Water, ATTN: John Kwolek, or his successor, at 2110 East Aurora Road, Twinsburg, Ohio 44087.

VIII. CIVIL PENALTY

14. The Raineri Defendants shall be jointly and severally liable to pay to the State of Ohio a civil penalty of **two-hundred twenty-five thousand dollars (\$225,000)** in installments according to the following schedule:

- (a) By no later than sixty (60) days following the entry of this Consent Order, the Raineri Defendants shall pay the first installment of **seventy-five thousand dollars (\$75,000)**.
- (b) By no later than eighteen (18) months following the entry of this Consent Order, the Raineri Defendants shall pay the second installment of **twenty-five thousand dollars (\$25,000)**.
- (c) By no later than twenty-four (24) months following the entry of this Consent Order, the Raineri Defendants shall pay the third installment of **twenty-five thousand dollars (\$25,000)**.

- (d) By no later than thirty (30) months following the entry of this Consent Order, the Raineri Defendants shall pay the fourth installment of **twenty-five thousand dollars (\$25,000)**.
- (e) By no later than thirty-six (36) months following the entry of this Consent Order, the Raineri Defendants shall pay the fifth installment of **twenty-five thousand dollars (\$25,000)**.
- (f) By no later than forty-two (42) months following the entry of this Consent Order, the Raineri Defendants shall pay the sixth installment of **twenty-five thousand dollars (\$25,000)**.
- (g) By no later than forty-eight (48) months following the entry of this Consent Order, the Raineri Defendants shall pay the seventh installment of **twenty-five thousand dollars (\$25,000)**, subject to the conditions in Paragraph 15 below.

15. In the event that the Raineri Defendants pay the first six (6) installments totaling two-hundred thousand dollars (\$200,000) on time pursuant to the schedule set forth in Paragraph 14 above and within forty-two (42) months of the entry of this Order, they will be released from payment of the last installment of twenty-five thousand dollars (\$25,000), as provided in Paragraph 14(g) above.

16. Penalty payments shall be made by certified check(s) for the amounts as stated above, payable to the order of "Treasurer, State of Ohio" and delivered to Martha Sexton, or her successor, at Ohio Attorney General's Office, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

17. If the Raineri Defendants miss any of the scheduled payments as set forth in Paragraph 14 above, all remaining payments along with interest as set forth in R.C. 5703.47 accruing from the date of entry of this Consent Decree shall become due and owing immediately.

IX. STIPULATED PENALTIES

18. In the event that the Raineri Defendants fail to comply with any requirement of Paragraphs 10 and/or 11 of this Consent Order, the Raineri Defendants are liable for and shall immediately pay stipulated penalties in accordance with the following schedule for each failure to comply:

- (a) For each day of each failure to comply with a requirement or meet a deadline from one (1) day to thirty (30) days: two hundred fifty dollars (\$250.00) per day per requirement not met;
- (b) For each day of each failure to comply with a requirement or meet a deadline from thirty-one (31) days to sixty (60) days: five hundred dollars (\$500.00) per day per requirement not met;
- (c) For each day of each failure to comply with a requirement or meet a deadline over sixty-one (61) days: seven hundred fifty dollars (\$750.00) per day per requirement not met.

19. Payments due under Paragraph 18 shall be made within forty-five (45) days from the date of the failure to meet the applicable deadline. Payments shall be accompanied by a written explanation of the deadline missed. Any payment required to be made under this paragraph shall be made by delivering a certified check or checks for the appropriate amount(s), made payable to "Treasurer, State of Ohio," to Martha Sexton, Environmental Enforcement Section, Ohio Attorney General's Office, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

20. The payment of stipulated penalties by the Raineri Defendants and the acceptance of such stipulated penalties by Plaintiff for specific violations pursuant to Section IX shall not be construed to limit Plaintiff's authority to seek additional relief or to otherwise seek judicial

enforcement of this Consent Order. Further, payment by the Raineri Defendants shall not be considered an admission of liability on the part of the Raineri Defendants.

21. The stipulated penalties imposed by Paragraph 18 of this Consent Order may be terminated as to each specific paragraph of this Consent Order, for which stipulated penalties are imposed, only after the Raineri Defendants have achieved and maintained compliance with all the requirements of that paragraph for a period of twelve consecutive months and have paid all stipulated penalties incurred related to that paragraph. Termination of one paragraph subject to stipulated penalties under this Consent Order shall not terminate the accrual of or the liability for payment of stipulated penalties under any other paragraph. Termination of stipulated penalties under this Consent Order shall only be upon written application by any party, and by order of the Court after the Court has made a determination that the requirements of this paragraph have been satisfied.

X. COMPLIANCE NOT DEPENDENT ON GRANTS OR LOANS

22. Performance of the terms of this Consent Order by the Raineri Defendants is not conditioned on the receipt of any Federal or State grants, loans and/or funds. In addition, the Raineri Defendants' performance is not excused by the failure to obtain or any shortfall of any Federal or State grants, loans and/or funds or by the processing of any applications for the same.

XI. MISCELLANEOUS

23. Nothing in this Consent Order shall affect the Raineri Defendants' obligation to comply with all applicable federal, state or local laws, regulations, rules or ordinances.

24. Any acceptance by the State of Ohio of any payment, document or other work due hereunder subsequent to the time that the obligation is due under this Consent Order shall not relieve the Raineri Defendants from the obligations created by this Consent Order.

25. The Raineri Defendants shall inform the Ohio EPA of any change in or the cessation of the business(es) that are the subject of these actions.

XII. COSTS

26. The Raineri Defendants shall pay the court costs of this action.

27. The Raineri Defendants are hereby ordered to pay the costs incurred by the Ohio EPA for the publication of the Consent Order in Ohio EPA's Weekly Review and a newspaper of general circulation. The Raineri Defendants shall pay the costs associated with publication by delivering a certified check payable to: "Treasurer, State of Ohio" and with a notation indicating that the funds are going to "Fund 699" on it, in the amount of the costs, to the Fiscal Officer, Ohio EPA, P.O. Box 1049, Columbus, Ohio 43216-1049, within thirty (30) days from the date they receive notice of the costs from Ohio EPA.

XIII. CONTINUING JURISDICTION

28. This Court shall retain jurisdiction over this action for the purpose of enforcing and administering the Raineri Defendants' compliance with this Consent Order. The parties agree that any claims for contempt or stipulated penalties shall be brought in the jurisdiction in which they occur. For the purposes of administering the payment of the civil penalty, the parties agree that Seneca County will be the proper venue, unless the State commences or has

commenced an action for contempt in either Huron or Mahoning Counties, then the State shall be permitted join any additional claim involving civil penalties to the Huron or Mahoning county actions.

XIV. ENTRY OF CONSENT ORDER AND FINAL JUDGMENT BY CLERK

29. The parties agree and acknowledge that final approval by the Plaintiff and the Raineri Defendants and entry of this Consent Order is subject to the requirements of 40 C.F.R. 123(d)(1)(iii), which provides for notice of the lodging of the Consent Order, opportunity for public comment, and the consideration of any public comments. Both Plaintiff and the Raineri Defendants reserve the right to withdraw this Consent Order based on comments received during the public comment period.

30. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon the signing of this Consent Order by the Court, the clerk is hereby directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the clerk is hereby directed to serve upon the parties a notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the appearance docket.

IT IS SO ORDERED.




DATE


JUDGE KRICHBAUM
COURT OF COMMON PLEAS
MAHONING COUNTY

APPROVED:


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OHIO ATTORNEY GENERAL


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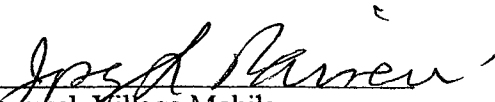
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